Customer No. 31013



REF. NO.: 177079-00057

AF
JFW

THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Phyllis Liethem et al.
Serial No:	09/334,125
Filed:	June 15, 1999
For:	**ABSORBENT PRODUCTS AND METHODS OF PREPARATION THEREOF**
Group Art Unit:	3761
Examiner:	J. F. Stephens

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Mail Stop Appeal Brief, Commissioner for Patents, - Patents, P.O. Box 1450
Alexandria, Virginia 22313-1450

William Spatz
Name of Applicant, Assignee or Registered Representative

Signature

December 21, 2005
Date of Signature

REQUEST UNDER 37 C.F.R. §41.50(b)(2) FOR A REHEARING OF THE BOARD'S DECISION ON APPEAL

MAIL STOP APPEAL BRIEF – PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

This is a Request for Rehearing on the Decision on Appeal dated October 21, 2005 in Appeal No. 2005-2682 in this application ("Decision"). This Request is submitted in Triplicate.

The Final Rejection which is under appeal rejected Appellants' claims as obvious under 35 U.S.C. §103(a) over two prior art references, namely U.S. Patent No. 3,658,064 to Pociluyko (hereinafter "**Pociluyko**") in view of U.S. Patent No. 2,083,575 to Novak (hereinafter "**Novak**"). Applicants believe that the Board's Decision affirming the Examiner's rejection of Claims 61 and 62 is improper as the Decision asserts a new ground of rejection which Applicants have never had the opportunity to address.

I. The Examiner's Rejection and Applicants' Arguments

The Examiner rejected claims 61 and 62 under 35 U.S.C. 103 (a) as being unpatentable over **Pociluyko** in view of **Novak**. The Examiner stated that **Pociluyko** discloses an absorbent article comprising a fluid permeable topsheet layer, a substantially fluid impermeable backsheet layer and a sublayer of fluff material. The Examiner conceded that **Pociluyko** did not disclose a method of manufacturing his fluff material, and did not suggest that **Pociluyko** discloses the use of based treated pulp. Rather, the Examiner stated that **Novak** discloses a method of making fluff pulp capable of being used in personal hygiene articles which comprises treating a wood fiber pulp containing wood fibers with a base at room temperature. The Examiner concluded that the present invention was obvious over the combination of these two references.

Applicants argued that the Examiner's reliance upon the combination of **Pociluyko** and **Novak** to arrive at the present invention was misplaced because neither **Pociluyko** nor **Novak** suggest that the **Novak** pulp would be suitable for use in the claimed method to make absorbent composites. Further, **Novak** does **not** teach that his pulp is fluffed. The pulp product of **Novak** is a wet-laid felt and not a fluff material as the Examiner alleged. As explained in the present Specification at page 14, lines 10-23, to fluff a wood fiber pulp, it must

first be dried and then subjected to dry shredding in a Hammermill or other attrition mill. In contrast, **Novak** describes introducing sheets of pulp into a Holland beater "with sufficient water to allow the stock to properly circulate." After the stock of **Novak** is separated, it is dumped into a stock chest and run off on a paper machine in the usual manner to make felt-like paper. See **Novak**, col. 2, line 54 to col. 3, line 16. Accordingly, **Novak** clearly describes the manufacture of wet-laid paper, not dry shredded fluff.

Applicants further argued that those skilled in the art could not substitute the felt of **Novak** for the fluff material of **Pociluyko** to produce the presently claimed invention as the Examiner has concluded.

II. The Board's Decision

In relevant part, the Board found that "[t]here's no dispute that Pociluyko, like appellants, discloses a method for making an absorbent composite useful for personal hygiene products comprising interposing a fluffed pulp layer in between a fluid permeable topsheet layer and a fluid impermeable backsheet layer. Pociluyko is silent with respect to whether the pulp layer is subject to chemical crosslinking. However, notwithstanding whether Novak discloses a method of making fluff pulp, as urged by the examiner, we find that it would have been obvious for one of ordinary skill in the art to make the fluff layer-containing composite of Pociluyko without chemically crosslinking the pulp. Since appellants acknowledge that it was known in the art to make wood pulp fluff by the claimed method, with the exception of including chemical crosslinking, we find that it would have been obvious for one of ordinary skill in the art to perform that known technique in making the fluff pulp of Pociluyko, without the chemical crosslinking. It is well settled that the elimination of a feature disclosed by the prior art along

with its attendant function and advantage is a matter of obviousness for one of ordinary skill in the art." (*Emphasis added*)

The Board goes on to state that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the prior art.

III. The Board's Rejection Ignores the Pociluyko's Pulp is Not Base Treated

The Board finds that it would have been obvious for one of ordinary skill in the art to make the fluff layer-containing composite of Pociluyko without chemically crosslinking the pulp, but ignores that the claims require that the wood fiber pulp used to make the fluff layer be first treated with a base at room temperature. Thus, Appellants have not merely eliminated a feature with its attendant function and advantage, they have added a new feature not suggested by the cited prior art. Since nothing in the cited reference suggests the advantage of using based treated pulp in the claimed method, finding the claims obvious in view of Pociluyko is not justified. In view of this, Appellants respectfully request that the Decision be withdrawn and that Applicants' claims be allowed.

IV. Appellants Had No Reason to Provide Evidence of Nonobviousness

Appellants further submit that since the Examiner did not reject the claims on the basis that it would be obvious to one of ordinary skill in the art to make the fluff layer containing composite of Pociluyko without chemically crosslinking the pulp, the Examiner's rejection was fully overcome by the arguments submitted in Appellants' briefs. It is only the Board's rejection, which is a new rejection, which arguably requires evidence of nonobviousness to

demonstrate unexpected results. Accordingly, if the Board does not withdraw its rejection based on the arguments in Section III, Appellants respectfully submit that the Board should either consider evidence of nonobviousness presented herein or remand this case to the Examiner so that evidence of nonobviousness can be considered by the Examiner.

V. Examples in the Application as Filed Demonstrate the Unobviousness of the Claimed Invention

Prior to the present invention, it was not believed to be possible to achieve the absorption, insult (or re-wetting), liquid retention, softness and pad integrity of modern absorbent composites without employing chemically crosslinked wood fiber pulp. In the production of absorbent devices such as baby diapers, incontinence and catamenial devices and wound dressings (i.e. absorption intensive devices) which contain wood fiber pulp, it has been conventional to use chemical crosslinking to increase the stiffness of the wood fiber pulp fibers, so that a fiber matrix made from them retains its bulk and pore volume when wet, thereby enhancing its absorbency (Specification at page 2, line 16 to page 3, line 10; and U.S. Patent No. 3,932,209 to **Chatterjee**, Col. 1, lines 35-40). The Specification of the present application at page 2, lines 16 to 22 also references several prior patents directed to the use of chemically crosslinked wood fiber pulp in absorbent composites. The Examiner's initially cited art of record, **Chatterjee,** is another such example. The present invention surprisingly discovered that by employing based treated wood fiber pulp according to the process of the invention, an absorbent composite with desirable absorbency properties for use in personal hygiene devices could be formed without chemically crosslinked wood fiber pulp. The avoidance of chemically crosslinked wood fiber pulp was the expressed objective of the present invention (Specification at page 1, lines 6-12).

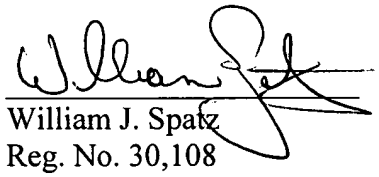
The Applicants subjected dozens of pulps to base treatment at a variety of conditions and then subjected those samples to exhaustive testing, including absorbency testing. By this testing, which is referenced in the instant application in the Examples reported at pages 16, 17, 22, 23, 26-32, 39-41, 45-47, 50, 52, 56, 58, 60, 61, 64, 66, 69 and 71, Applicants discovered that wood fiber pulp which is base treated and fluffed has absorbency properties, softness and strength which are materially superior to those of conventional fluff pulp, and sufficient to enable its use in the claimed absorbent devices without chemical crosslinking.

V. Conclusion

In light of the above, Applicants respectfully request that the Decision be withdrawn and that Applicants' claims be deemed patentable and allowed.

This request is being filed within two months of the date of the Decision pursuant to 37 C.F.R. § 41.52 (a) (1) and therefore no fees are believed due. However, the Commissioner is hereby authorized to credit overpayments or charge any necessary fees to Deposit Account No. 50-0540.

Respectfully submitted,



William J. Spatz
Reg. No. 30,108

MAILING ADDRESS:

Customer No. 31013
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9257